resulted in the dehousing of her loved one, his ailing father and his step-mother. I believe that active thoughts of reneging on the arrangement and keeping the property for herself first occurred to her some time during the first half of 1981, after she had come to know of the Plaintiff's marriage. Now having reneged on her arrangement she is now denying the trust and relying upon the Sale Contract, the Deed of Conveyance to her and the Statute of Frauds.

This conclusion renders it necessary for me to consider whether the Statute of Frauds passed in 1677 affords a defence to the Plaintiff's claim. The Defendant says that it is necessary for the Plaintiff to prove by some writing or writings signed by the Defendant that not only the conveyance to her was subject to some trust, but also what that trust was. In support the very old cases of *Shales* v. *Shales*[1], *Skett* v. *Whitmore*[2], *Willis* v. *Willis*[3] and *Smith* v. *Matthews*[4] were cited. The answer to these cases is to be found in the Court of Appeal case of *Rochefoucauld* v. *Boustead*[5]. On page 206 of the Report Lindley L.J. delivering the judgment of the Court of Appeal has this to say:

"... It is further established by a series of cases, the propriety of which cannot now be questioned, that the Statute of Frauds does not prevent the proof of a fraud; and that it is a fraud on the part of a person to whom land is conveyed as a trustee, and who knows it was so conveyed, to deny the trust and claim the land himself. Consequently, notwithstanding the statute, it is competent for a person claiming land conveyed to another to prove by parol evidence that it was so conveyed upon trust for the claimant, and that the grantee, knowing the facts, is denying the trust and relying upon the form of conveyance and the statute, in order to keep the land himself. This doctrine was not established until some time after the statute was passed."

In my view the fall of the evidence before me is such as to prevent the Defendant from using the Statute of Frauds in such a way as to prevent the Plaintiff from proving his case. The *Rochefoucauld* ***Case*** supports me in the view that a trust thus established is an express trust. There will therefore be judgment for the Plaintiff in his claim and costs. The order is to be settled by me in Chambers.

Claim allowed.

Solicitors: *Shook Lin & Bok; Chung & Co.*

LEONG KUM FATT v. ATTORNEY-GENERAL

[O.C.J. (Chua J.) March 21, 1984]

[Singapore – Civil Suit No. 2241 of 1980]

Administrative Law – Dismissal of Police Inspector from the Force for assaulting a suspect – Whether in breach of rules of natural justice and of provisions of Police Regulations 1959 – Whether wrongful dismissal - Judicial review, scope of – Supervisory functions of High Court – Constitution of Singapore, art. 110(3) – Police Regulations 1959, regs. 5, 7(5), 8(4), 9 & 11 – Police Force Act (Cap. 78), ss. 27(1)(c) & 28(1).

Administrative Law – Judicial review – Scope of – Supervisory functions of High Court.

The plaintiff, who was an Inspector, was dismissed from the Singapore Police Force for slapping and assaulting a police suspect, an offence under section 27(1)(c) of the Police Force Act (Cap. 78) and punishable under section 28(1) of the said Act.

The plaintiff claims (a) a declaration that his purported dismissal from the Force is null and void; (b) a declaration that he had continued to be and was still an Inspector in the Force and entitled to be remunerated as such; (c) alternatively, damages for wrongful dismissal.

The short facts were as follows. On the night of July 18, 1976, there was a fight at a bar in Joo Chiat Road. It was believed that secret society elements were involved. The plaintiff was at that time attached to the Joo Chiat Police Station and was the Inspector-in-charge Secret Societies in "G" Division. The plaintiff commenced investigation. On July 23, 1976 at about 8.30 a.m., four suspects, Tan Lian Ann, Lim Ho Kiat, Soh Kee Hwee and Tan Yong Chiang were escorted into the plaintiff's office. At about 1.55 p.m. the same day Tan Lian Ann and Lim Ho Kiat were released and the other two were released later that day. On July 30, 1976, Tan Siak Tong, the father of Tan Lian Ann, lodged a complaint with the Complaints Bureau that Tan Lian Ann was assaulted by the plaintiff on July 23, 1976. The said complaint was referred to ASP Ng on August 17, 1976, for investigation. Two years later the plaintiff received a letter of July 31, 1978 that in accordance with Police Regulations a Board had been appointed to hear into two charges of assault against him, to wit, for slapping Tan Lian Ann on the face several times and for fisting him once on his stomach, both of which were offences under section 27(1)(c) of the Police Force Act (Cap. 78) and punishable under section 28(1) of the aforesaid Act.

On August 11, 1978, the plaintiff appeared before the Board. The hearing concluded on November 17, 1978, when the plaintiff was informed that the Board found him guilty of two charges. On February 2, 1979, the plaintiff received a letter from the Commissioner of Police stating that he was dismissed from the Police Force and that his dismissal would take effect the day following the date of receipt of the letter. This decision was confirmed by a letter dated October 6, 1979 from the Secretary of the Public Service Commission.

Held, dismissing the plaintiff's claim: (1) the scope of judicial review is limited only to review of the decision-making process, that is the hearing, and not the decision itself. The court is concerned only with the hearing not the conduct of the investigations, the findings of the Board or the reasons given by the Board for its findings;

(2) there was sufficient evidence for the Board to come to its finding that the plaintiff was guilty of both the charges;

(3) from the Record of proceedings, it was clear that the Board did comply with the requirements of the law and regulations.

Per curiam: the Board is not bound to comply with the Evidence Act or the Criminal Procedure Code although it may look to them for guidance. The provisions of the Police Regulations except insofar as they are designed to give effect to art. 110(3) of the Singapore Constitution are not mandatory but are merely directory as being purely procedural rules. Any breach or non-compliance with any such purely procedural rules does not give a person aggrieved thereby a legal right to redress in a court of law.

Cases referred to:

(1) *Anisminic* v. *Foreign Compensation Commission* [1969] 2 W.L.R. 163.

(2) *Wong Kim Sang & Anor.* v. *Attorney-General* [1982] 1 M.L.J. 176, 181.

(3) *Wong Keng Sam & Ors.* v. *Pritam Singh Brar* [1968] 2 M.L.J. 158, 160.

CIVIL SUIT.

J.B. Jeyaretnam for the plaintiff.
Jeffrey Chan for the defendant.

Cur. Adv. Vult.

Chua J.: The plaintiff, who was an Inspector, was dismissed from the Singapore Police Force and he now claims (a) a declaration that his purported dismissal from the Force is null and void; (b) a declaration that he had continued to be and is still an Inspector in the Force and entitled to be remunerated as such; (c) alternatively damages for wrongful dismissal.

The short facts are these. On the night of July 18, 1976, there was a fight at the Koh Peng Bar in Joo Chiat Road. It was believed that secret society elements were involved. The plaintiff was at that time attached to the Joo Chiat Police Station and was the Inspector-in-charge Secret Societies in "G" Division. The plaintiff commenced investigations. On July 23, 1976, at about 8.30 a.m. four suspects were escorted into the plaintiff's office. They were Tan Lian Ann, Lim Ho Kiat, Soh Kee Hwee and Tan Yong Chiang. After questioning them these four were placed in the lock-up. At about 1.55 p.m. the same day Tan Lian Ann and Lim Ho Kiat were released and the other two were released later that day. On July 30, 1976, Tan Siak Tong, the father of Tan Lian Ann, lodged a complaint with the Complaints Bureau that Tan Lian Ann was assaulted by the plaintiff on July 23, 1976. On August 17, 1976 the complaint of Tan Siak Tong was referred to ASP Ng Fook Foo for investigation. Nothing happened until 2 years later when the plaintiff was informed by letter dated July 31, 1978, that in accordance with Police Regulations a Board had been appointed to hear into two charges against him as follows:—

> "(a) that you, on or about July 23, 1976 at about 10.00 a.m. at the Crime Branch, Joo Chiat Police Station, Singapore, did assault one Tan Lian Ann, to wit, by slapping his face several times, and you have thereby committed an offence under section 27(1)(c) of the Police Force Act (Chapter 78) and punishable under section 28(1) of the aforesaid Act;
>
> (b) that you, on or about July 23, 1976 at about 4.00 p.m. at the Crime Branch, Joo Chiat Police Station, Singapore did assault one Tan Lian Ann, to wit by fisting him once on his stomach, and you have thereby committed an offence under section 27(1)(c) of the Police Force Act (Chapter 78) and punishable under section 28(1) of the aforesaid Act."

The plaintiff appeared before the Board on August 11, 1978. The Chairman of the Board was Supt. Ng Leng Hua and the member DSP Ee Guan Chwee. The Prosecuting Officer was ASP D. Ferreira and the Defending Officer was ASP H.L. Miranda. The hearing concluded on November 17, 1978, when the plaintiff was informed that the Board had found him guilty of the two charges. By letter dated February 2, 1979, from the Commissioner of Police, the plaintiff was informed that he was dismissed from the Police Force and that his dismissal would take effect the day following the date of receipt of the letter. The plaintiff then made an application to the Public Service Commission to review the decision of the Commissioner of Police pursuant to the provisions of section 28(2) of the Police Force Act. By letter of October 6, 1979, from the Secretary of the Public Service Commission, the plaintiff's then solicitors were informed that the Public Service Commission had decided to confirm the decision of the Commissioner of Police. By letter of October 9, 1979, the Commissioner of Police informed the plaintiff that, pursuant to the decision of the Public Service Commission, the plaintiff was dismissed the Force from the date following the date of receipt of the said letter by the plaintiff.

The plaintiff's contentions are (1) that the proceedings before the Board were conducted in breach of the provisions of the Police Regulations 1959 and/or in breach of the rules of natural justice or to the duty to act fairly imposed on the Board; (2) that the evidence before the Board was not capable in law to warrant the finding that the plaintiff was guilty of the two charges and that the Board was wrong in law in so finding the plaintiff and that the reasons given by the Board for the said findings were wrong in law; (3) that the said findings were so arbitrary and capricious that no reasonable person could have come to such findings on the evidence before the Board; (4) that the plaintiff was not given a reasonable opportunity of being heard before he was dismissed from the Service.

The plaintiff submits that for the aforesaid reasons his dismissal is null and void.

On his first and fourth contentions, the plaintiff says that the proceedings before the Board were conducted in breach of –

(a) Article 110(3) of the Constitution of Singapore which provides that no public officer shall be dismissed without being given a reasonable opportunity of being heard.

(b) Regulation 5 of the Police Regulations, 1959, which provides that "a complaint against a police officer shall be reduced to writing and be read over to the informant and shall be signed by him...

(c) Regulation 7(5) which provides that the officer charged shall be allowed to cross-examine all witnesses for the prosecution.

(d) Regulation 8(4) which provides *inter alia* that "The Board shall record the evidence of such witnesses ..." and the Board "... shall then record its finding and also, if so directed by the Commissioner, its recommendation."

(e) Regulation 9 which provides that

> "The procedure of any disciplinary enquiry shall strictly follow the procedure laid down in these Regulations and the written records of all proceedings shall be set down and dated in such manner as to show that the procedure has been complied with."

(f) Regulation 11 which provides that the Commissioner may order that a Board appointed under the provisions of these Regulations be re-convened if he is of the opinion that the enquiry has not been conducted by the Board in a proper manner.

The matters relied upon by the plaintiff to support his complaints are:

(a) The failure to give the plaintiff the complaint made by Tan Siak Tong and to hear him when the complaint was being investigated by ASP Ng Fook Foo.

(b) The failure of the prosecution to produce the complaint made by Tan Siak Tong and the refusal of the Board to direct the production of the complaint when the Defending Officer called for its production during the cross-examination of Tan Lian Ann (P.W. 2) and Soh Kee Kwee (P.W. 3).

(c) The Board's refusal or failure to give the plaintiff an opportunity to cross-examine Tan Siak Tong (P.W. 1) and Tan Lian Ann on the complaint when it was finally admitted.

(d) The Board's refusal or failure to give the defending Officer an opportunity to cross-examine ASP Ng Fook Foo, the investigating officer, on the complaint or even on the conduct of the investigations made by him.

(e) The Board disallowing the Defending Officer's many questions put to witnesses. According to the Defending Officer 30% of the questions asked by him were disallowed.

(f) The Chairman's frequent interruptions which deprived the Defending Officer an opportunity to adequately present the plaintiff's case.

(g) The record of the proceedings was incomplete and the Commissioner of Police was unable to decide whether the inquiry has been conducted in a proper manner before making his decision on the punishment.

(h) The proceedings were conducted in the absence of the plaintiff after the Defending Officer had applied for the complaint of Tan Siak Tong to be produced when he was giving evidence.

The plaintiff also says that the Chairman was biased. The matters relied upon by the plaintiff to support his complaint are:

(a) The totally irresponsible manner in which the Defending Officer was prevented from introducing the Station Diary of Joo Chiat Police Station (which was in his possession) when he sought to do so.

(b) Making a recommendation for plaintiff's dismissal when it was not asked for by the Commissioner to make any recommendation.

(c) Questions by the Chairman on the practice of releasing detainees just before the 24 hours were up.

(d) Statement by the Chairman before announcing the verdict to the effect that "It is not I who found the defendant guilty. However, he has been found guilty."

(e) The reasons relied upon for the Board's findings.

On his second and third contentions the plaintiff says that –

(1) the Board had totally failed to evaluate the evidence of Tan Siak Tong and Tan Lian Ann in the light of all the other evidence before the Board;

(2) the Board failed to give any consideration or adequate consideration to the entries in the Station Diary and the Lock-Up Diary,

(3) the Board's reasons for these findings were not based on evidence but on pure conjecture and speculation;

(4) the evidence before the Board was incapable in law of supporting the findings of the Board;

(5) the Board misdirected itself.

First I will deal with the second and third contentions of the plaintiff. What is the nature and extent of the supervisory functions of the High Court over inferior tribunals?

In *Anisminic Ltd* v. *Foreign Compensation Commission*[9] Lord Pearce said (p 192):

"Further, it is assumed, unless special provisions provide otherwise, that the tribunal will make its inquiry and decision according to the law of the land. For that reason the courts will intervene when it is manifest from the record that the tribunal, though keeping within its mandated area of jurisdiction, comes to an erroneous decision through an error of the law. In such a case the courts have intervened to correct the error.

The courts have, however, always been careful to distinguish their intervention whether on excess of jurisdiction or error of law from an appellate function. Their jurisdiction over inferior tribunals is supervision, not review.

> "That supervision goes to two points: one is the area of the inferior-jurisdiction and the qualifications and conditions of its exercise; the other is the observance of the law in the couse of its exercise."
> (*Rex* v. *Nat Bell Liquors Ltd.* [1922] 2 A.C. 128, 156).

It is simply an enforcement of Parliament's mandate to the tribunal. If the tribunal is intended on a true construction of the Act to inquire into and finally decide questions within a certain area, the courts' supervisory duty is to see that it makes the authorised inquiry according to natural justice and arrives at a decision whether right or wrong. They will intervene if the tribunal asks itself the wrong questions (that is, questions other than those which Parliament directed it to ask itself). But if it directs itself to the right inquiry, asking the right questions, they will not intervene merely because it has or may have come to the wrong answer, provided that this is an answer that lies within its jurisdiction."

Kulasekaram, J. in *Wong Kim Sang & Anor.* v. *Attorney-General*[2] had considered and clearly set out the nature and extent of the supervisory functions of the High Court. He said (p.181):

"The jurisdiction over inferior tribunals is supervision and not review. Its supervision would be to ensure that the inferior tribunal acts within the jurisdiction permitted by Parliament in its mandate to the tribunal. If the tribunal on a true construction of the Act is to inquire into and finally decide questions within a certain area, this court's supervisory function is to see that it makes the authorised inquiry according to natural justice and arrives at a decision whether right or wrong. The duty of the court is twofold:

(1) to see that the tribunal makes the right inquiry or question within its permitted area and not outside the area and,

(2) that it acts according to natural justice in that the answer that it gives to a right inquiry or question though it may be wrong is still an answer that lies within its jurisdiction. In other words, it is an answer that is open to a reasonable person to make."

The scope of judicial review is limited only to review of the decision-making process, that is the hearing, and not the decision itself. So long as the Board directs itself to the right inquiry and asks the right questions within its permitted area and not outside that area and acts according to natural justice the court would not intervene. The court is concerned only with the hearing not the conduct of the investigations, the findings of the Board or the reasons given by the Board for its findings.

The plaintiff called as his witness Chua Yat Aun who was a Cadet Inspector attached to Joo Chiat Police Station in June 1976. The defendant raised no objection to his being called. His evidence shortly was this. Tan Lian Ann was his cousin. Tan Siak Tong was his mother's brother. He saw Tan Lian Ann and three others in the plaintiff's office on July 25, 1976 at 10 a.m. After Tan Lian Ann and the others were escorted away he went in to see plaintiff and asked plaintiff to assist Tan Lian Ann in any way. At 11.45 a.m. he passed by the lock-up and Tan Lian Ann

called to him. He asked Tan Lian Ann if he had any complaints, whether he had been assaulted by any police officers. Tan Lian Ann said "No". At 2.15 p.m. he went to the lock-up to see Tan Lian Ann but he was not there. He ascertained that Tan Lian Ann had been released. Then he went up to plaintiff's office. He did not see Tan Lian Ann anywhere there. The plaintiff told him there was no evidence against Tan Lian Ann and he had been released. He did not see Tan Lian Ann that day anywhere in the Station after he saw him in the lock-up at 11.45 a.m. The next day he went with his mother to Tan Siak Tong's house. He asked Tan Siak Tong if Tan Lian Ann had complained that he had been assaulted by a police officer. Tan Siak Tong replied that Tan Lian Ann had not complained.

I am of the view that the evidence of Chua Yat Aun is not admissible in these proceedings. The plaintiff by his own neglect failed to produce Chua Yat Aun before the inquiry. To admit Chua Yat Aun's evidence would be to re-open the inquiry into the charges against him. He cannot now say that because he neglected to produce a witness in his favour the findings of the Board must be set aside and the inquiry re-opened.

Even if the evidence of Chua Yat Aun is admissible I find that his evidence cannot be believed. In any case Chua Yat Aun cannot say that the plaintiff never assaulted Tan Lian Ann.

I have carefully studied the evidence adduced before the Board and I find that the plaintiff's contention, that the conclusion of the Board was wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, untenable. There was sufficient evidence for the Board to come to its finding that the plaintiff was guilty of both the charges.

That being so I find no merit in the plaintiff's second and third contentions.

I now come to deal with the first and fourth contentions of the plaintiff.

Mr. Jeyaretnam submits that the record of the proceedings before the Board is incomplete and that Police Regulation 8(4) has been infringed. The complaint is that many of the questions asked, some of the objections taken and some of the applications made by the Defending Officer and the rulings delivered by the Board were not recorded.

"Evidence" means "information that is given in a legal investigation to establish the fact or point in question" (*Shorter Oxford English Dictionary* 3rd Ed). "Evidence" does not include all questions asked, objections taken, applications made or rulings delivered.

ASP Ee Guan Chwee's evidence is that he recorded all applications and objections in note form. Even if some be omitted there is no contravention of Regulation 8(4).

Mr. Jeyaretnam says that there were deliberate omissions by the Board. Plaintiff in his evidence said that he thought that the Board was dishonest in the way in which they recorded the proceedings. This I do not believe. There had been no complaint of this until the present proceedings. Mr. Jeyaretnam contends that the plaintiff's own notes of the proceedings reflect accurately what took place. It is not clear whether only one set of notes was taken at different times by the plaintiff and the Defending Officer or there were two sets of notes recorded separately by the plaintiff and the Defending Officer. The plaintiff is not able to produce his notes. The notes, if they existed, were never disclosed or used to contradict the official record any time.

I now come to deal with the complaint of the plaintiff as regards the conduct of the proceedings by the Board.

The Board is not bound to comply with the Evidence Act or the Criminal Procedure Code although it may look to them for guidance. The provisions of the Police Regulations, except insofar as they are designed to give effect to Article 110(3) of the Singapore Constitution, are not mandatory but are merely directory as being purely procedural rules. Any breach or non-compliance with any such purely procedural rule does not give a person aggrieved thereby a legal right to redress in a court of law (See *Wong Keng Sam & Ors.* v. *Pritam Singh Brar*[3]).

From the Record of Proceedings, it is clear that the Board did comply with the requirements of the law and regulations.

The author of the 4th Ed of *de Smith's* Judicial Review of Administrative Action has this to say as regards bias (at pp. 261, 262 & 263):

"Effect of Actual Bias

The courts have laid down many times, in cases where the conduct of magistrates and professional disciplinary

tribunals has been impugned, that they are not concerned with the question whether an adjudicator was in fact biased. The reason for this attitude is presumably that it would be unseemly for the court to purport to pry into the state of mind of any judicial officer. Even where the evidence adduced has pointed strongly to the inference that an adjudicator was in fact biased, the courts have confined themselves to determining whether a likelihood of bias has been established. And this question is to be answered by inferences drawn from the circumstances. Probably, however, there is no rule of law which absolutely precludes a court from holding that an adjudicator was in fact biased. If such a rule exists, it does not extend to review of the conduct of arbitrators. It is open to a party to lead evidence to prove that an independent arbitrator has shown actual bias in favour of the other party, or that an arbitrator who is an employee of the other party has prejudged the issue. In administrative law it is open to a party aggrieved to show that a tribunal disposed of his case under dictation by another authority, or by reference to a predetermined rule of policy without giving any consideration to the merits of his contentions. In such cases the point at issue is usually said to be not whether there was a biased hearing but whether there was any hearing at all; yet the cases could equally well be regarded as exemplifying the materiality of actual bias in administrative law.

. . . .

Real Likelihood of Bias or Reasonable Suspicion of Bias

A "real likelihood" of bias means at least a substantial possibility of bias. The court, it has been said, will judge of the matter 'as a reasonable man would judge of any matter in the conduct of his own business." The test of real likelihood of bias, which has been applied in a number of leading cases in magisterial and liquor licensing law, is based on the reasonable apprehensions of a reasonable man fully appraised of the facts. It is no doubt desirable that all judges, like Caesar's wife, should be above suspicion; but it would be hopeless for the courts to insist that only "people who cannot be suspected of improper motives" were qualified at common law to discharge judicial functions, or to quash decisions on the strength of the suspicions of fools or other capricious and unreasonable people."

The plaintiff's complaints relate only to certain specified instances. Even if his evidence is believed, these do not amount to an arbitrary and capricious conduct of the proceedings.

It appears to me that the Defending Officer's conduct before the Board left much to be desired. The Defending Officer wanted to take the conduct of the proceedings out of the hands of the Chairman and was at times disrespectful to the Chairman and he himself thought that this disrespect might even border on contempt and he apologised to the Board before he made his submissions. The difficulties which the Defending Officer encountered were of his own making. I must say that the Chairman had shown great patience and at the same time he had been firm but fair to the Defending Officer. I can find nothing to criticise the Chairman on his conduct of the proceedings. His rulings were proper. Every opportunity was given to the Defending Officer to present the plaintiff's case.

It is alleged that the Chairman on the last day of the hearing of the inquiry remarked that it was not he who found the plaintiff guilty but that the plaintiff was found guilty. It is suggested that these remarks indicated that the Chairman was acting on the directions of some higher authority in coming to his findings. Both the Chairman and ASP Ee categorically denied that this event ever took place. I do not believe that such an event took place. It would have been foolish and reckless for the Chairman to make such a remark even if he had received directions from higher authority.

The plaintiff's claim is dismissed with costs.

Claim dismissed.

Solicitors: *J.B. Jeyaretnam & Co.*

SINGAPORE FINANCE LTD. v. LIM KAH NGAM (S'PORE) PTE. LTD. & EUGENE H.L. CHAN ASSOCIATES (THIRD PARTY)

[O.C.J. (Lai Kew Chai J.) April 18, 1984]

[Singapore – Civil Suit no. 3675 of 1975]

Torts – Nuisance and negligence – Claim for damages for – Extensive cracks in building – Whether due to excavation works in neighbouring site by defendants – Applicability of common law in Singapore – Civil Law Act (Cap. 30), s.5(2)(a).

Evidence – Expert's evidence – Conflicting evidence – Court's evaluation of – Evidence Act (Cap. 5), s.5.

English Law – Applicability of common law in Singapore – Rule in Acton v. Blundell applicable here.

In mid-January 1974 the defendants were excavating their site enclosed within a cofferdam for 3 basement floors. They were in the course of erecting a 13-storey building. During this period, the owners of buildings in the neighbourhood complained that cracks had appeared in their buildings. The plaintiffs whose building suffered